IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 410 of 1996
With
SPECIAL CIVIL APPLICATION No. 3513 of 2007
With
SPECIAL CIVIL APPLICATION No. 4231 of 2007
To
SPECIAL CIVIL APPLICATION No. 4234 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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LM SHAH PRIMARY SCHOOL & 1 - Petitioner(s)
Versus
DISTRICT EDUCATION OFFICER & 4 - Respondent(s)

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Appearance :
MR HV PUJARA for Petitioner(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 1,
RULE UNSERVED for Respondent(s) : 2,
MR PARESH M DAVE for Respondent(s) : 3 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/03/2007

ORAL JUDGMENT

1. As common question of facts and law arise, and common judgment and order passed by the Gujarat Primary Tribunal, Ahmedabad dated 10.10.1995 passed in Application Nos. 290/92 to 292/92 and Application Nos. 31/93 to 33/93 is challenged, all these petitions are disposed of by this common judgment and order.

2. The respondents herein preferred Application Nos. 290/92 to 292/92 before the Gujarat Primary Tribunal ("the Tribunal" for short) for an appropriate order directing the petitioner to pay salary to them in accordance with Government Pay-scale and restraining the petitioner – School Management from terminating their service except in accordance with law. That during the pendency of the aforesaid Applications, services of the concerned teachers/ respondents were terminated and brought to end, respective respondents (original applicants) preferred Application No. 31/93 to 33/93. That all the aforesaid applications came to be heard jointly by the learned Tribunal. Number of submission were made on behalf of the respective parties. However, considering the fact that there is breach of Section 40B of the Bombay Primary Education Act, the Tribunal by common judgment and and order allowed all the aforesaid applications

and quashed and set aside the order of termination dated 22.01.1993 and directed the management to reinstate all the respondents. Being aggrieved and dissatisfied with the common judgment and order dated 10.10.1995 passed in Application Nos. 290/92 to 292/92 and 31/93 to 33/93, the petitioner – School Management have preferred present Special Civil Applications under Articles 226 and 227 of the Constitution of India.

3. Number of submission have been made on behalf of the respective parties on merits, on facts as well as on law. However, as for the reasons stated herein after, this Court proposes to remand the matter to the Tribunal for its fresh decision, this Court is not elaborately dealing with the same.

4. Shri Pujara, learned Advocate appearing on behalf of the petitioner – School management has submitted that there are no appointment orders issued by the management. None of the teachers were / are having requisite qualifications of P.T.C., which is required for the purpose of primary teachers. He has further submitted that all the respondents / teachers were appointed in the School on purely ad-hoc basis, even before Standard I to IV were recognized. It is submitted

that all the teachers have worked in Standard I to IV only. It is submitted that as none of the respondents – original applicants were appointed after following due procedure as required under the Bombay Primary Education Act and the Schedule- F, and that their appointments were not on sanctioned post at the relevant time, they have no right on the post, therefore, Section 40B would not be attracted. According to him, Section 40B would be attracted only in a case where teacher who has worked for more than one year having requisite qualifications for the post as primary teacher and is appointed on sanctioned post and is appointed after following due procedure as required under Schedule -F; provisions of Bombay Primary Education Act and relevant rules. He has submitted that inspite of aforesaid objections and the contentions raised, the Tribunal has not dealt with and considered the same and has allowed all the applications only on the ground that original applicants worked for more than one year and there is breach of Section 40B of the Act. Shri Pujara, learned Advocate has relied upon Rule 6, Rule 10, Rule 13 of Schedule – F, Section 40B of the Primary Education Act. He has relied upon following decisions in support of his submission :

1. Bhartiben Nanubhai Balsara v/s. State of Gujarat & Ors.

reported in 1989 (2) GLH 62

2. State of Maharashtra & Ors. v/s. Vijay Vasantrao Deshpande reported in AIR 1999 SC 197

3. State of M.P. V/s. Yogesh Chandra Dubey reported in (2006) 8 SCC 67

4. Ramsukh & Ors. V/s. Aprushikshti Adhupayk and Others Samiti reported in AIR 1990 SC 592

5. On the other hand, Shri Paresh Dave, learned Advocate appearing on behalf of the concerned respondents has submitted that non issuance of appointment order is not relevant as the relationship of employee and employer is already established. It is submitted by him that for attracting Section 40 B of the Act, what is required is that he must be a teacher working in recognized Private Primary School. He submitted that in the present case both the ingredients are satisfied. Therefore, Section 40B would be attracted. It is submitted by him that one of the teacher was having required qualifications. He has also raised number of submissions on merits.

6. On going through judgment and order passed by the Tribunal, it appears that the Tribunal has not considered

so many aspects which are required to be considered; such as whether the appointment of respondents were in accordance with law and after following due procedure as required under the Act, Rules, Schedule – F; whether all the original applicants were having requisite qualifications of PTC and whether Section 40B would be attracted in a case where the appointments are made without following due procedure as required under the provisions of the Act, Rules and Schedule – F; in spite of the fact that they are not having requisite qualifications of PTC and more particularly, at the time when the appointment of the respondents concerned were made school was not recognized. Under the circumstances, this Court proposes to remand the matter to the Tribunal for taking decision afresh and to consider aforesaid aspects.

7. Shri Pujara, learned Advocate appearing on behalf of the petitioner submitted that he has no objection if the matter is remanded to the Tribunal for taking afresh decision in accordance with law and on merits and to consider the aforesaid aspects. Shri Dave, learned Advocate appearing on behalf of the original applicants has submitted that he would have no objection if the matter is remanded, however, if the impugned judgment and order passed by the Tribunal is set

aside and the matter is remanded in that case order of termination would be revived and the respondents would have to go home. He has submitted that if during the intervening period till the Tribunal decides on remand, if the parties are directed to maintain status quo, then, he would have no objection in remanding the matter to the Tribunal and directing the Tribunal to take appropriate decision in accordance with law and on merits.

8. Under the circumstance, considering the impugned judgment and order, it appears that the Tribunal has allowed all the application only on the ground that concerned applicants have worked for more than one year and that there is breach of Section 40B of the Act. The Tribunal has not considered whether the appointment of the concerned applicants were made on substantive post; whether the appointments were made in accordance with the provisions of the Bombay Primary Education Act, Rules and Schedule F; whether the concerned applicants were having requisite qualifications of PTC; in a case where appointments are made *de-hors* the provisions of Act, rules and Schedule F and in a case where the teacher - concerned employee is not having requisite qualifications which is required for Primary Teacher,

still Section 40B would be attracted or not. All these points are not considered by the Tribunal. Hence, the matter is required to be remanded and is accordingly, remanded to the Tribunal for its fresh decision and to consider aforesaid aspects and take appropriate decision in accordance with law and on merits and in light of observations made herein above. Accordingly, impugned judgment and order passed by the Gujarat Primary Tribunal are hereby quashed and set aside. The Tribunal is directed to to take appropriate decision in accordance with law and on merits within a period of 6 (six) months from the date of receipt of this order. It goes without saying that it will be open to the concerned parties to make all the submissions which are available to them before the Tribunal and the Tribunal shall consider the same and decide in accordance with law and on merits. Till the Tribunal takes appropriate decision on merits on remand, parties are directed to maintain status quo as on today. The parties are directed to cooperate the Tribunal. With these present Special Civil Applications are disposed of. Rule is made absolute to the aforesaid extent in each of the petitions. However, in the facts and circumstance, there shall be no order as to costs.

[M.R.Shah, J.]

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